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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CAESARS ENTERTAINMENT
CORPORATION d/b/a RIO ALL-SUITES
HOTEL AND CASINO,

Respondent,

and

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, DISTRICT
COUNCIL 15, LOCAL 159, AFL-CIO,

Charging Party.

No. 28-CA-060841

**MOTION TO STRIKE BRIEF OF
RESPONDENT AND FOR FURTHER
SANCTIONS**

Charging Party requests that the Board strike the brief filed by Respondent, Caesars Entertainment Corporation d/b/a Rio All-Suites Hotel and Casino (“Rio”), on October 5 in this matter. This motion is based upon the fact that the Brief intentionally misrepresents the rule that is at issue.

The facts supporting this motion are based entirely on the record before the Board.

The Board issued its decision on October 27, 2015, finding certain violations of the 2007 handbook maintained by Rio but remanding to an Administrative Law Judge for further hearing

its rule concerning “use of company systems, equipment and resources.” *See Caesars Entm’t Corp. d/b/a Rio All-Suites Hotel & Casino*, 362 NLRB No. 190, slip op. at 5 (2015).

The Board incorrectly identified the rule at issue. The title of the rule cited by the Board comes from the 2015 handbook. The correct title of the rule in the 2007 handbook that was at issue was “Computer Usage.” *See* Charging Party Brief filed on October 5, at n.3, for further explanation.

In any case, the Board explicitly stated the language that was at issue at footnote 13 of its decision:

The computer confidentiality rule, p. 2.14 states in relevant part (emphasis added):

Do not disclose or distribute outside of [Rio’s] any information that is marked or considered confidential or proprietary unless you have received a signed non-disclosure agreement through the Law Department. In some cases, such as with Trade Secrets, distribution within the Company should be limited and controlled (e.g., numbered copies and a record of who has received the information). You are responsible for contacting your department manager or the Law Department for instructions.

The general restrictions section on computer usage, p. 2.14, provides (emphasis added):

Computer resources may not be used to:

- Commit, aid or abet in the commission of a crime
- Violate local, state or federal laws
- Violate copyright and trade secret laws
- *Share confidential information with the general public, including discussing the company, its financial results or prospects, or the performance or value of company stock by using an internet message board to post any message, in whole or in part, or by engaging in an internet or online chatroom*
- *Convey or display anything fraudulent, pornographic, abusive, profane, offensive, libelous or slanderous*
- *Send chain letters or other forms of non-business information*
- Seek employment opportunities outside of the Company

- Invade the privacy of or harass other people
- *Solicit for personal gain or advancement of personal views*
- *Violate rules or policies of the Company*

Do not visit inappropriate (non-business) websites, including but not limited to online auctions, day trading, retail/wholesale, chat rooms, message boards and journals. Limit the use of personal email, including using streaming media (e.g., video and audio clips) and downloading photos.

362 NLRB No. 190, slip op. at 5 n.13.

There was no mystery about what was at issue.

An Administrative Law Judge (“ALJ”) issued a Notice of Hearing on September 28, 2015, ordering the parties to a hearing as to the rule described above. The ALJ described “the relevant portions of the rule are as follows,” using the quoted language above, without the italics. The ALJ directed a hearing to be held on December 15, 2015.

The ALJ who heard the case clearly understood that that was the rule that was at issue. In her decision (JD (SF)-20-16, dated May 3, 2016), she again quoted exactly the same rule. *See* ALJ Decision, JD(SF)-20-16, pp. 2-3.¹ She prevented the parties from litigating other issues.

This was the rule that the parties briefed pursuant to the Board’s remand, the Notice of Hearing issued by the ALJ and the rulings of the ALJ during the hearing on December 15. It is the rule that is pending before the Board.

Notwithstanding the clear direction of the Board, counsel for Rio deliberately misrepresents the rule. Counsel’s brief states at page 2:

Computer Usage:

Computer resources are Company property and are provided to authorized users for business purposes. The Company has the right to review or seize computer resources, including hardware, software, documents and electronic correspondence.

Confidentiality:

Do not disclose or distribute outside of [Rio] any information that is marked or considered confidential or proprietary unless you have received a signed nondisclosure agreement through the Law Department. In some cases, such as with Trade Secrets,

¹ She even quoted the parts that were in emphasis.

distribution within the Company should be limited and controlled (e.g., numbered copies and a record of who has received the information). You are responsible for contacting your department manager or the Law Department for instructions.

General Restrictions:

Computer resources may not be used to:

- Commit, aid or abet in the commission of a crime
- Violate local, state or federal laws
- Share confidential information with the general public, including discussing the company, its financial results or prospects, or the performance or value of company stock by using an Internet message board to post any message, in whole or in part, or by engaging in an internet or online chat room
- Convey or display anything fraudulent, pornographic, abusive, profane, offensive, libelous or slanderous
- Send chain letters or other forms of non-business information
- Seek employment opportunities outside of the Company
- Invade the privacy of or harass other people
- Solicit for personal gain or advancement of personal views
- Violate rules or policies of the Company.

By comparing the two rules, the misrepresentation is obvious.

First, the first paragraph was not part of the rule that the Board has put at issue in its Decision or the Notice issued August 1, 2018.

Second, nothing in the quotation suggests that there is a large amount of words between the paragraph entitled “Computer Usage” and the paragraph entitled “Confidentiality.” No ellipsis or other indication that parts were deleted. In fact, “Computer Usage” appears at page 25 (page 2.13 of the handbook), while the remainder appears at page 26 (page 2.14 of the handbook). Counsel intentionally misrepresented the rule to suggest that they are placed together, when, in fact, there is a lot of language in between.

Third, the quotation fails to contain the italicized portions, which the Board emphasized in its decision, that were at issue and were later repeated in the ALJ’s decision. It’s particularly relevant since the Notice and Invitation to File Briefs specified only the bulleted language “prohibiting the use of its computer resources to send non-business information.” This is the language that the Board focused on in its notice to the public for briefing.

Fourth, counsel deliberately deletes the last paragraph of the rule. That last paragraph is particularly important, as we argue in our brief, because the language acknowledges that the employees who were given access to email were allowed to use it for personal purposes. The only restriction contained in that sentence, which counsel intentionally omitted, is that those who have access are expected to “[l]imit the use of personal email, including using streaming media ... and downloading photos.” *See* 2007 Handbook, p. 2.14.

Counsel deliberately misstates the rule that is at issue. Counsel adds a paragraph that was never at issue. Counsel deletes a paragraph that is central to this case.

This is no mere negligence. It is intentional. Counsel’s duty to be truthful to this agency and to the public has been breached. It is “alternative facts.”

The Brief should be stricken. This matter should be referred to the General Counsel to consider whether action is appropriate under the Board’s Rules and Regulations Section 102.177 for misconduct on the part of counsel.

Dated: October 10, 2018

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD
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By: /s/ David A. Rosenfeld
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PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On October 10, 2018, I served the following documents in the manner described below:

MOTION TO STRIKE BRIEF OF RESPONDENT AND FOR FURTHER SANCTIONS

- ☒ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kshaw@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 10, 2018, at Alameda, California.

/s/ Katrina Shaw
Katrina Shaw

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